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continued on next page]*

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13 *Management, LLC; Redwood Master Fund,*
14 *Ltd; Redwood Opportunity Master Fund, Ltd;*
 Manuel 2018, LLC; Ginogerum, LLC; and
 White-Hathaway Opportunity Fund, LLC

19 || K.A.,

20 Plaintiff,

21 || vs.

22 MINDGEEK S.A.R.L. a foreign
23 entity; MG FREESITES, LTD., a
24 foreign entity; MINDGEEK USA
25 INCORPORATED, a Delaware
26 corporation; MG PREMIUM LTD,
27 a foreign entity; MG GLOBAL
ENTERTAINMENT INC., a
Delaware corporation; 9219-1568
QUEBEC, INC., a foreign entity;
BERND BERGMAIR, a foreign
individual; FERAS ANTOON, a
foreign individual; DAVID

CASE NO. 2:24-cv-04786-WLH-ADS

**REDWOOD DEFENDANTS'
APPLICATION FOR LEAVE TO
FILE UNDER SEAL REDWOOD'S
OMNIBUS REPLY IN SUPPORT OF
MOTION TO DISMISS
COMPLAINTS IN RELATED CASES**

*Declaration of Adam M. Reich and
[Proposed] Order Submitted
Concurrently Herewith*

Place: Courtroom 9B
Judge: Hon. Wesley L. Hsu

1 TASSILLO, a foreign individual;
2 VISA INC., a Delaware
3 corporation; REDWOOD
4 CAPITAL MANAGEMENT, LLC,
5 a Delaware limited liability
6 company; REDWOOD DOE
7 FUNDS 1-7; COLBECK CAPITAL
8 MANAGEMENT, LLC, a Delaware
9 company, COLBECK DOE FUNDS
10 1-3,
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12 Defendants.
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Complaint filed: June 7, 2024

1 *[Additional Counsel for Defendants continued from caption page]*

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1 Pursuant to Local Rule 79-5.2.2, Defendants Redwood Capital Management,
2 LLC, Redwood Master Fund, Ltd, Redwood Opportunity Master Fund, Ltd, Manuel
3 2018, LLC, Ginogerum, LLC, and White-Hathaway Opportunity Fund, LLC
4 (collectively, “Redwood” or “Redwood Defendants”) respectfully submit this
5 Application for Leave to File Under Seal limited portions of Redwood’s Omnibus
6 Reply in Support of Motion to Dismiss Complaints in Related Cases (the “Reply”)
7 (the “Application”).

8 Redwood sought to seal the same confidential material (the “Confidential
9 Material”) in the Application for Leave to File Under Seal Materials Related to the
10 Omnibus Motion to Dismiss at ECF Nos. 69 and 71 (the “First Application to Seal”)
11 and in *Fleites v. MindGeek S.a.r.l. et al.*, Case No. 21-cv-04920-WLH-ADS (the
12 “*Fleites* Case”) (ECF Nos. 495, 493, 449, 450) (the “*Fleites* Applications”).
13 Plaintiffs thereafter filed a Consolidated Opposition to Defendants’ Sealing
14 Applications Related to Defendants’ Motions to Dismiss the Complaints in the
15 Related Actions at ECF No. 89. The Court has not yet issued a ruling on the First
16 Application to Seal or the *Fleites* Applications.

17 Redwood, through counsel, advised Plaintiffs, through counsel, of its intent to
18 similarly apply to seal the same Confidential Material that it sought to seal in the First
19 Application and the *Fleites* Applications, on January 7, 2025. *See* Declaration of
20 Adam M. Reich in support hereof (“Reich Decl.”), ¶ 6. Plaintiffs indicated that they
21 would oppose the Application. *Id.*

22 The standard of review a court applies when reviewing applications to seal
23 depends on whether the application is brought in connection with dispositive motions
24 or non-dispositive motions. *See Pintos v. Pac. Creditors Ass ’n*, 605 F.3d 665, 677-79
25 (9th Cir. 2010). A “compelling reasons” standard applies to dispositive motions. *Id.*

26 Under the “compelling reasons” standard, a district court should weigh
27 “relevant factors” to determine if there is an articulable “compelling reason” to seal
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1 documents. *Pintos*, 605 F.3d at 679. ““Relevant factors” include the ‘public interest
2 in understanding the judicial process and whether disclosure of the material could
3 result in improper use of the material for scandalous or libelous purposes or
4 infringement upon trade secrets.”” *Id.* at 679 n.6 (citation omitted). This list is not
5 exhaustive.

6 There are a variety of “compelling reasons” to seal documents. Courts have
7 found “compelling reasons” to seal documents, where their disclosure would be in
8 violation of a specific confidentiality provision set forth in those documents. *See*,
9 *e.g.*, *SDILabs, Inc. v. Sameday Techs., Inc.*, No. CV 23-05619-MWF (MRWx), 2023
10 WL 10407399, at *1 (C.D. Cal. Sept. 18, 2023) (concluding “compelling reasons”
11 existed to seal a term sheet, which contained a confidentiality provision that may
12 “expos[e] [the defendants] to a potential lawsuit” if disclosed) (alterations added)
13 (citation omitted); *Hubrick Ltd. v. Wanderset, Inc.*, No. CV18-7980-SJO (RAOx),
14 2019 WL 3000652, at *6 (C.D. Cal. Mar. 19, 2019) (finding compelling reasons to
15 seal a document, where disclosure would “risk potential lawsuits and injury as a result
16 of a breached confidentiality agreement”).

17 Courts have also found compelling reasons to seal documents where disclosure
18 would risk competitive injury. *See, e.g.*, *In re Qualcomm Litig.*, No. 3:17-cv-0108-
19 GPC-MDD, 2018 WL 6252523, at *2 (S.D. Cal. May 9, 2018) (finding that
20 compelling reasons existed to seal certain information subject to confidentiality
21 agreements); *Arabian v. Sony Elecs., Inc.*, No. 05-CV-1741 WQH (NLS), 2007 WL
22 627977, at *14 (S.D. Cal. Feb. 22, 2007) (granting an application to seal exhibits to
23 a declaration because they contained “proprietary and/or trade secret information[]”
24 and the information was “of such a commercially-sensitive nature that it would create
25 a risk of competitive injury . . . if it were disclosed to the public”); *Ovonic Battery
26 Co. v. Sanyo Elec. Co.*, No. 14-cv-01637-JD, 2014 WL 2758756, at *3 (N.D. Cal.
27 June 17, 2014) (granting a request to seal a petition because it contained information
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1 that, if publicly released, “could place [the petitioner] in a diminished bargaining
2 position in future negotiations”). Courts have also sealed documents that reflect
3 “confidential business strategies and other commercially sensitive information.” *See*
4 *Campbell v. PricewaterhouseCoopers, LLP*, 642 F.3d 820, 822 n.1 (9th Cir. 2011);
5 *see also ImprimisRx, LLC v. OSRX, Inc.*, No. 21-cv-01305-BAS-DDL, 2023 WL
6 7029210, at *3 (S.D. Cal. Oct. 24, 2023) (commenting that future business planning
7 and competitive strategy amount to “quintessential business information that may
8 harm a firm’s competitive standing if disclosed to the public”) (citations omitted).
9 This is consistent with the United States Supreme Court’s determination that courts
10 may seal “business information that might harm a litigant’s competitive standing[.]”
11 *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978) (citation omitted).

12 The Ninth Circuit has also repeatedly stated that confidential and proprietary
13 business information should be filed under seal. *See, e.g., IMAX Corp. v. Cinema*
14 *Techs., Inc.*, 152 F.3d 1161, 1168 n.9 (9th Cir. 1998); *In Re Duel-Deck Video*
15 *Cassette Recorder Antitrust Litig.*, 10 F.3d 693, 694 (9th Cir. 1993) (noting it “is
16 common now in business litigation” to seal “confidential [business] information”)
17 (alteration added).

18 In light of the foregoing, there are compelling reasons for the Court to grant
19 Redwood’s Application:

20 *First*, portions of the Reply reference the 2013 Financing Agreement and the
21 2018 Financing Agreement, which each contain express confidentiality provisions
22 (*see Fleites Applications to Seal* (citing Pearl Decl., Exs. B at 143, C at 150-52)), and
23 disclosure of their terms would expose Redwood to potential litigation relating to
24 those provisions. Accordingly, compelling reasons warrant sealing citation and/or
25 reference thereto. *See Hubrick*, 2019 WL 3000652, at *6; *SDI Labs*, 2023 WL
26 10407399, at *1. In addition, because the 2013 Financing Agreement and the 2018
27 Financing Agreement contain confidential financing terms, were not previously
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1 disclosed before, and reflect confidential business strategies and approaches to
2 financing negotiations of Redwood and other lenders, there are additional compelling
3 reasons to seal those portions of the Reply that cite and/or reference the 2013 and
4 2018 Financing Agreements. *See Actian Corp. v. AB Sciex LLC*, No. 23-cv-05113-
5 BLF, 2023 WL 7166811, at *2 (N.D. Cal. Oct. 30, 2023) (“Compelling reasons exist
6 to seal confidential business information, the disclosure of which would cause a party
7 competitive harm.”); *Adema Techs., Inc. v. Wacker Chemie AG*, No. 5:13-cv-05599-
8 PSG, 2013 WL 6622904, at *2 (N.D. Cal. Dec. 16, 2013) (finding compelling reasons
9 justified sealing a Supply Agreement because “the structure and terms . . . [we]re
10 considered highly confidential commercial information by [the movant]” and the
11 movant only ever disclosed its supply agreements “with the protection of a
12 confidentiality agreement and to government authorities when required and with as
13 much protection from public disclosure as possible”); *J.R. Simplot Co. v. Wash.
14 Potato Co.*, No. C16-1851RSM, 2016 WL 11066581, at *1 (W.D. Wash. Dec. 29.,
15 2016) (finding “compelling reasons exist to seal [a financing document] because the
16 public release of confidential finance information puts Defendants, and the
17 companies which they manage, at a competitive disadvantage when negotiating
18 future loan terms, contracts with customers, and business opportunities” (alteration
19 added). Here, disclosure of loan terms would “create an asymmetry of information
20 in the negotiation of future . . . deals,” sealing is appropriate. *Apple, Inc. v. Samsung
21 Elecs. Co.*, No. 11-CV-01846-LHK, 2012 WL 4933287, at *2 (N.D. Cal. Oct. 16,
22 2012). Furthermore, because versions of the 2013 and 2018 Financing Agreements
23 were produced by another party in this case, which that party’s counsel designated as
24 Highly Confidential pursuant to the Amended Protective Order entered in the *Fleites*
25 Case (see Reich Decl., ¶ 5), compelling reasons exist to maintain citation and/or
26 reference to the agreements’ terms under seal.

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1 **Second**, portions of the Reply reference the Notice of Default, which was
2 designated as confidential (*see Fleites Applications* (citing Pearl Decl., Ex. D)), sent
3 in connection with confidential financing agreements, and references confidential
4 terms of confidential agreements. Accordingly, compelling reasons warrant sealing
5 citation and/or reference thereto. *See Hubrick*, 2019 WL 3000652, at *6; *SDI Labs*,
6 2023 WL 10407399, at *1; *see also Lightning Box Games Pty, Ltd. v. Plaor, Inc.*, No.
7 17-cv-03764-EDL, 2017 WL 7310782, at *4 (N.D. Cal. Dec. 29, 2017) (holding that
8 materials that “refer to confidential agreements [] often [provide] a compelling reason
9 justifying sealing if the agreements contain commercially sensitive information”), *R.*
10 *& R. adopted by*, 2018 WL 3069296 (N.D. Cal. Feb. 27, 2018) (citations omitted);
11 *Nicolosi Distrib., Inc. v. Finishmaster, Inc.*, No. 18-cv-03587-BLF, 2018 WL
12 10758114, at *2 (N.D. Cal. Aug. 28, 2018) (ordering contracts sealed because they
13 “contain[ed] proprietary and confidential business information, including potential
14 trade secrets and business practices, such as product rates and purchase
15 requirements”).

16 In sum, compelling reasons exist to seal limited portions of the Reply that cite
17 and/or reference details of the 2013 and 2018 Financing Agreements and the Notice
18 of Default, which, as set forth above and in the First Application to Seal and the
19 *Fleites Applications*, each have compelling reasons to be maintained under seal. *See,*
20 *e.g., Opperman v. Path, Inc.*, No. 13-cv-00453-JST, 2017 WL 1036652, at *2 (N.D.
21 Cal. Mar. 17, 2017) (granting sealing as to excerpts of opposition brief referencing
22 exhibits sealed by the court).

23 In light of the fact that there are multiple, articulable compelling reasons to
24 seal limited portions of the Reply, Redwood respectfully requests that the Court grant
25 this Application.

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1 DATED: January 8, 2025

PAUL HASTINGS LLP

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4 By: /s/ James M. Pearl
JAMES M. PEARL

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7 *Attorneys for Defendants Redwood*
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Opportunity Fund, LLC

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